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August 25, 1993

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AUG 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

RE: Comments of Avenue TV Cable Service, Inc.
Cost of Service
MM Docket 93-215

Dear Mr. Caton:

Enclosed please find an original and four copies of Comments in the above-referenced matter. Should you have any questions regarding this, please contact the undersigned counsel.

Sincerely,

Mark J. Palchick
Counsel for
Avenue TV Cable Service, Inc.

MJP/mcl
Enclosure
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AUG 25 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation Cost of Service	MM Docket 93-215

COMMENTS OF AVENUE TV CABLE SERVICE, INC.

Avenue TV Cable Service, Inc. ("Avenue") by its attorneys, herewith submits its limited comments in the above-referenced notice of proposed rulemaking. Avenue has limited its comments to areas where its particular business experience runs contrary to the tentative conclusions made by the Commission in its notice of proposed rulemaking.[1]

Avenue TV Cable is a privately owned cable television system serving City of San Buenaventura and unincorporated areas of Ventura County, California. It presently provides cable television service to 10,750 subscribers.

[1]Avenue, however, reserves the right to amplify its showing in response to other comments when it files its reply comments.

I. THE BASIS FOR COMPUTING RATE OF RETURN SHOULD NOT BE AN ORIGINAL ASSET COST OR DEPRECIATE ORIGINAL ASSET COSTS.

The basis for computing rate of return should not be on original asset costs or depreciated original assets costs because this penalizes the type of cable operator and cable operation behavior that the Act seeks to foster. The 1992 Cable Act[2] and the FCC rules adopted to implement the '92 Cable Act are designed to foster, among other things, long term investment in cable systems as opposed to short term speculation and technological advancement as opposed to stasis. Avenue's cable system was substantially constructed in 1966 for a cost of approximately $2.9 million and has been continuously rebuilt and updated since that time. It is presently poised to undertake a further rebuild to provide for the introduction of fiber optics and compression technology. However, since Avenue has been the sole owner of the system since it was originally constructed, its depreciated basis is now only $700,000.00. If the Commission adopts as its rate basis only the depreciated original cost of the equipment, Avenue would be unable to obtain a reasonable rate of return on its plant. The financial incentives would be very strong to abandon serviceable plant and replace it with new un-depreciated plant. Avenue believes that this is contrary to the public interest. The public interest is far better served where Avenue is able to realize a return which

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[2] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992)("1992 Cable Act").

allows it to devote a substantial portion of its budget to upgrading and replacing plant and equipment as needed. With a sufficient rate of return, Avenue is able to fund these upgrades out of current operating cash with no need to go to the more higher priced equity and debt markets. This ultimately benefits consumers by providing them the highest quality service at reasonable prices.

II. INDIVIDUAL OPERATORS SHOULD BE PERMITTED TO USE THE BALANCE SHEET APPROACH TO DETERMINE WORKING CAPITAL NEEDS.

The working capital needs of individual operators are highly specific and the needs are determined by the operating procedures and working capital requirements of the system. Any attempt to nationally "homogenize" an industry-wide working capital allowance would by its very nature be inappropriate. It has been Avenue's experience that it generally incurs a negative working capital requirement in the amount of $100,000.00 in the provision of regulated cable service. Based on its understanding of other cable systems in the area, this amount is neither a typical nor typical because, as mentioned above, working capital requirements are highly specific to the needs and the nature of the system.

III. THE RATE BASIS MUST INCLUDE ALLOCATIONS FOR CAPITAL EXPENDITURES.

The original Avenue cable television plant consisted of 4 channels and 3 miles of plant. Since that time the channel capacity has been expanded to 54 and the number of miles of plant served has expanded to 118. Avenue is now in the process of planning a major rebuild to integrate fiber technology and provide for the provision of digital compression. For the most part, Avenue's capital expenditures have been funded out of operating cash flow. By funding these expenditures out of operating cash flow, Avenue has been able to substantially reduce the cost of financing these expenditures compared to what the cost would be if they were financed either with debt, equity or a combination debt and equity. The savings is then passed along to the customer. However, the financing of capital expenditures out of cash flow is only possible in a rate turn environment which allows the planned capital expenditures over the long term to be incorporated as part of the rate base. Since providing these capital expenditures as part of the rate base provides subscribers with a modern, efficient and well maintained system at a lower cost than would result if they were financed from the debt and/or equity markets, such inclusion is in the public interest.

IV. COST ALLOCATIONS SHOULD BE LIMITED TO GROSS AS OPPOSED TO MINUTE LEVELS.

Avenue currently tracks its cost allocations only down to total cost of operations. While it is possible that cost allocations could be tracked all the way down to installation decoders and remotes, such tracking would be highly burdensome and expensive, this cost which would have to be passed onto the consumer. It is respectfully requested that the cost allocation requirements be limited to areas similar to those that Avenue presently tracks. Avenue believes that its experience is fairly typical for the middle size operators of 12,000 subscribers or less.

V. THE COMMISSION PROPOSED RATE OF RETURN OF 11-14% IS UNREALISTIC.

A cable company's cost of capital including both debt and equity varies to a large degree on the geographic location of the system and its size. Cable systems such as Avenue TV Cable do not have available to it large equity pools put together by insurance companies and other large investment companies. Nor does it have available Libor and other international debt. Avenue, a privately held non-publicly traded company, must obtain its equity sources locally. Accordingly, the appropriate standard for judging equity rate of return should be based on the market available to the individual cable company. In Avenue's market, return on equity is typically 12-15%.

Similarly, Avenue's sources of debt are highly restricted. In fact, as a result of the Commission's recent rate regulation many of its former sources of national debt no longer exists. Avenue must therefore turn to the local market. The average cost of debt for a company of the size of Avenue in its market is 10-12%. Over the course of its operation of its cable systems, Avenue has sought to maintain a debt to equity ratio of 10%. Its current debt to equity ratio is 14%. This low level of debt is partially the result of the lack of available sources for appropriately priced debt. Accordingly, given Avenue's current ratio of debt to equity and the cost of debt and equity in its market, its blended rate of return needs to be 15-20%.

The Commission must remember that below the top 100 cable systems, most cable companies are locally controlled and managed. As a result, using the telephone experience, which obtains equity from a national and international base, is inappropriate.

VI. STREAMLINING ALTERNATIVES.

A major deficiency of the benchmark standard is that it ignores a central tenant of cable television operations and construction. The construction of a mile of cable is relatively fixed. It makes little difference in the construction of that plant whether 100,000 subscribers receive service or 10 subscribers receive service. A large component of the maintenance of that plant is also relatively fixed. For every 15 miles of plant, 1 technician is needed to adequately maintain the plant. At a minimum, it takes 11[3] employees[4] to adequately staff the billing maintenance and operations of a cable company. The present benchmark method does not take into account these factors. At best they are based on an industry penetration average that does not apply to the smaller systems. And, by smaller systems, Avenue does not just mean the micro systems of less than 1,000 subscribers off a headend. Since Avenue has less than 100,000, its average cost for cable programming services is 20% or greater than those companies that have 100,000 subscribers. Avenue's average cost per mile of plant to maintain and operate the system is $10,000.00. This is spread over a density of 91 subscribers per mile. In fact, in some areas, in order to provide adequate service, Avenue has constructed as much as 11 miles of plant in order to deliver service to only 200 subscribers. Accordingly, Avenue recommends that the benchmark figures be increased by a factor of 1.25 for systems with densities of less than 70 homes per mile. Further, Avenue recommends that since programming costs represent 34 percentage of its annual operating costs, any cable system with less than 100,000 subscribers should be permitted to increase

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[3]This is office personnel only. The entire staff equals 25 people including local access channel staff (2 people).

[4]This was before the management and accounting intensive nature of rate regulation was imposed.

the benchmark rates by an additional 20%. Further, for operators with 12,000 subscribers or less, it has been Avenue's experience that their fixed costs per subscriber are greater than the "average cable television company". Accordingly, it recommends that benchmark rates for cable systems of 12,000 or less be increased 25%.

CONCLUSION.

Unfortunately, for many cable operators, the benchmark tables do not adequately represent a fair rate of return. In order to comply with the '92 Cable Act and with the Taking Clause of the United States Constitution, the Commission must provide a cost of service proceeding as a safety valve for those systems for which the benchmark rates are inapplicable. Avenue, like many other cable operators wishes to primarily provide good quality, up-to-date, consumer friendly service. The suggests made above will assist Avenue and other cable companies like it in this goal.

Respectfully submitted,

AVENUE TV CABLE SERVICE, INC.

By: ______________________

Mark J. Palchick
Baraff, Koerner, Olender & Hochberg, P.C.
5335 Wisconsin Avenue, NW, Suite 300
Washington, D.C. 20015
202/686-3200

August 25, 1993

CERTIFICATE OF SERVICE

I, Marianne C. Lynch, certify that I have this 25th day of August, 1993, sent by regular United States mail, postage prepaid, a copy of the foregoing "**COMMENTS OF AVENUE TV CABLE SERVICE, INC.**" to:

Ron Parver, Esq., Chief*
Cable Television Branch
Federal Communications Commission
1919 M Street, NW, Room 242
Stop Code: 1800E4
Washington, D.C. 20554

Chairman James H. Quello*
Federal Communications Commission
1919 M Street, NW, Room 802
Stop Code: 0106
Washington, D.C. 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, NW, Room 844
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Washington, D.C. 20554

Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, NW, Room 832
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Ms. Alexandra Wilson
Federal Communications Commission
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Mr. William H. Johnson, Deputy Chief
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Federal Communications Commission
1919 M Street, NW, Room 314
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By: Marianne C. L
Marianne C. Lynch

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* Hand delivered